

CHAPTER NO. 281

SENATE BILL NO. 1935

By Crutchfield, Herron

Substituted for: House Bill No. 2007

By McMillan, Henri Brooks, Kent, Walker

AN ACT to amend Tennessee Code Annotated, Title 63.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 63-1-117, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a)(1)(A) As used in this subsection the term "health care providers" shall mean all health care providers, establishments or facilities licensed, registered, certified or permitted pursuant to Tennessee Code Annotated, Title 63 or Title 68 and regulated either under the authority of the Department of Health or by any agency, board, council, or committee attached to the department.

(B) Notwithstanding the provisions of Tennessee Code Annotated, Section 63-2-101 (b) (2), records of all health care providers shall be made available for inspection and copying upon presentation of an authorization for release signed by the patient or his or her legal representative, or without an authorization for release when a written request that meets each of the following three (3) requirements is made:

(i) The request specifically identifies the records to be made available by patient(s) name(s), except for requests made of those facilities regulated by the board for licensing health care facilities which shall be specific to either patient(s) name(s), diagnosis, medical condition, treatment, admission or discharge dates, or outcomes.

(ii) The request is made in good faith pursuant to the department's responsibility for oversight of the health care system by any one of the following:

(a) An investigator employed by the Department of Health performing the duly authorized function of investigation of complaints filed against health care providers licensed pursuant to Tennessee Code Annotated, Title 63 or Title 68, Chapters 24, 29, or 140; or

(b) An inspector employed or authorized by contract with the Department of Health to perform any statutorily authorized inspection of any establishment or premises operated by a health care provider licensed

pursuant to Tennessee Code Annotated, Title 63 or Title 68, Chapters 24, 29, or 140; or

(c) A surveyor employed by the Department of Health performing the duly authorized function of investigation of complaints filed against, or surveys required to be conducted of, health care providers licensed pursuant to Tennessee Code Annotated, Title 68, regulated by the board for licensing health care facilities.

(iii) (a) The request is accompanied by a statement signed by a designated member of that board, council or committee regulating the health care providers whose records are requested, acting as an independent reviewer, that affirms, after review of the necessary information, that the request is made in good faith in response to or in aid of a verified complaint or required survey or inspection that requires production of the records for their resolution. Those boards, councils and committees regulating health care providers as defined by this section shall designate one of their licensed members to review and make an independent determination of the necessity for the production of the records.

(b) If the request is on behalf of a health related profession the enforcement powers of which resides either with the Department of Health or the division of health related boards, the request must be accompanied by the statement required by this subdivision signed by a licensed member of that profession, acting as an independent reviewer, who is not an employee of the state and who affirms, after review of the necessary information, that the request is made in good faith in response to or in aid of a verified complaint, or required survey or inspection that requires production of the records for their resolution. The provisions of subsection (b) of this section shall apply to any licensed individual.

(c) If the independent reviewer makes a determination that access to patient records is necessary a determination shall also be made, prior to issuing the statement required by this subdivision, whether under the circumstances an authorization for release shall first be sought from the patient(s) involved and the amount of time within which the release(s) should be obtained. The independent reviewer in making this determination shall take into account all relevant factors including, but not limited to, the nature of the complaint and the potential harm to a provider or a provider's practice as compared to the public health, safety, and welfare issues involved. If the request for an authorization for release is refused by a patient or the patient's legal representative or is not obtainable after good faith efforts within the period of time specified by

the independent reviewer then the statement authorizing access without a release for that patient's record may be issued.

(d) The statement required by this subdivision is not required for those facilities regulated by the board for licensing health care facilities required by federal law to produce their records for inspection.

(C) This section shall not apply to records that are made statutorily confidential to the public or to records that are statutorily privileged. Records that are made statutorily confidential to the public shall require for their production either a release signed by the patient, or his or her legal representative, or a lawful subpoena. Records that are made statutorily privileged shall require for their production a release that specifically identifies the privilege, contains a statement that the privilege is waived, and that is signed by the patient or his or her legal representative.


(2) Any health care provider and representative of any health care provider, who furnishes records to a duly authorized representative of the Department of Health shall be immune from liability to any patient, individual or organization for furnishing such information, data, reports or records, or for damages resulting from any decision, opinion, action and proceedings rendered, entered or acted upon by the Department of Health, if the information or other records or documents provided were provided or created in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist.

(3) Willfully disregarding a lawful request pursuant to this section is grounds for disciplinary action and or civil penalty assessments against any licensed health care provider before either the department, division of health related boards, or applicable professional licensure board, council or committee.

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 21, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 4th day of June 2003


PHIL BREDESEN, GOVERNOR